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Via ECF

KERRY S. CULPEPPER *

* ADMITTED TO PRACTICE IN VIRGINIA, HAWAII
AND BEFORE THE USPTO

Sept. 5, 2024

Magistrate Judge Matthew J. Skahill

Mitchell H. Cohen Building

& U.S. Courthouse

4th & Cooper Streets

Camden, New Jersey 08101

Re: *Bodyguard Productions, Inc., et al. v. RCN Telecom Services of Massachusetts, LLC, et al.*,
1:21-cv-15310- ESK-MJS;

Hearing Time: Sept. 13, 2024 at 2:00 PM

Dear Judge Skahill,

The Parties write to you jointly in response to your Order [ECF No. 118] of Aug. 13, 2024 instructing the Parties to address the priorities moving forward.

Of the four disputes Defendants' counsel listed in the joint letter [Doc. #104] of June 26, 2024, three remain (1, 2 and 4) as set forth below:

1. The parties' joint submission by email on February 3, 2023 [ECF No. 104-1].
2. Plaintiffs' September 27, 2023 letter brief [ECF No. 66]; Defendants' responsive letter brief filed October 18, 2023 [ECF No. 72]; Plaintiffs' Reply letter brief filed Oct. 26, 2023 [ECF No. 73].
4. Defendants' February 12, 2024 letter brief [ECF No. 94]; Plaintiffs' responsive letter brief filed February 19, 2024 [ECF No. 98].

The Parties' position is that the following disputes should be prioritized to expedite the resolution of this case:

- A. The dispute concerning whether the Court should issue a Cable Act Order ordering Defendants to disclose certain subscriber information. *See* ECF No. 104-1.
- B. The dispute concerning whether the case should be bifurcated to a first stage where discovery is limited solely to whether Defendants satisfy the safe harbor in 17 U.S.C. §

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512(a), to be followed by summary judgment briefing on that issue. *See* ECF Nos. 66 (at 1-2), 72 (at 2) and 73 (at 2).

- C. The dispute concerning the relevant time frame for discovery, namely, whether Plaintiffs can invoke the discovery rule to propound discovery seeking pre-2018 documents and information (specifically, back to 2015). *See* ECF Nos. 66 (at 2), 72 (at 2-4) and 73 (at 2-3).

Respectfully, /s/ksc/ Kerry S. Culpepper kculpepper@culpepperip.com /s/Michael Cukor/ Michael Cukor McGeary Cukor LLC mcukor@mcgearycukor.com Counsel for Plaintiffs	Respectfully, /s/ <u>Edward F. Behm, Jr.</u> Edward F. Behm, Jr. Armstrong Teasdale LLP Attorney I.D. No. 017972002 2005 Market Street 29th Floor, One Commerce Square Philadelphia, PA 19103 (267) 780-2000 (215) 405-9070 (fax) ebehm@atltp.com
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